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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,823	10/07/2004	Burkhard Pollak	LUKP:123US	5822
24041 7590 11/27/2007 SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			EXAMINER PILKINGTON, JAMES	
			ART UNIT 3682	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/711,823	Applicant(s) POLLAK ET AL.	
	Examiner James Pilkington	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3, 4, 6 and 9 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 5, 7, 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 6 and 9, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimura, USP 4,911,031, in view of Jerwick, USP 6,082,215.

Re clm 1, Yoshimura discloses a gearbox actuator comprising:

- A drive unit (1 or 4)
- A single selector shaft (22)
- Wherein said single selector shaft comprises a shift finger (23) and disengaging elements (sides of 2 and 23, one side is always disengaged from 31-34 when the other side is engaged/pushing the rail forward or back words), said single selector shaft (22) is driven by said drive unit (1 or 4)
- The shift finger (23) and disengaging elements are arranged to operate shift rails (35-38)

Yoshimura does not disclose that the selector shaft and the drive unit are arranged in a gearbox actuator housing and that there is a bearing arrangement comprising protruding rods that support the gearshift rails.

Jerwick teaches that a selector shaft (34) and a drive unit (end of selector shaft at 68) are arranged in a gearbox actuator housing (64/50) and a bearing arrangement comprising protruding rods (80 and 82) that support the gearshift rails for the purpose of providing a shift assembly that can be conveniently manufactured and repairable while still maintaining a reliable and durable transmission having an acceptable shift feel (C1/L60-63).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the teachings of Yoshimura and provide for the selector shaft and a drive unit to be arranged in a gearbox actuator housing and a bearing arrangement formed of protruding rods operatively arranged to support the gearshift rails, as taught by Jerwick, for the purpose of providing a shift assembly that can be conveniently manufactured and repairable while still maintaining a reliable and durable transmission having an acceptable shift feel.

Re clm 3, Yoshimura in view of Jerwick discloses that the housing comprises an attachment part (base 50 of Jerwick) operatively arranged to be attached to a gear housing of a gearbox (screwed on, see Figures 2 and 5 of Jerwick) where in the protruding rods protrude through an opening or recess in the gear housing into the gearbox actuator housing (see Figures 5, 6A and 6B of Jerwick).

Re clm 6, Jewick discloses that two protruding rods are provided (80 and 82 of Jerwick).

Clms 4 and 9 are product-by-process claims and product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps.

Allowable Subject Matter

3. Claims 5, 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments filed 9/25/07 have been fully considered but they are either moot or not persuasive.

5. Applicant's argument with respect to the drive unit is moot in view of the amendment to the rejection of claim 1 above.

6. The Applicant argues that the amendment to positively recite the protruding rods renders the claim allowable. The Applicant is focusing the argument on how the bearing arrangement is different in the instant application versus the prior art. Such a difference is not recited in the claim. In the telephone interview held August 2, 2007 it was suggested that the Applicant positively claim the protruding rods and something that differentiates the rods over the prior art. The Applicant has only done one of the two things suggested by the Examiner which has now resulted in claims 5, 7 and 8 being objected to.

Conclusion

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Pilkington whose telephone number is (571) 272-5052. The examiner can normally be reached on Monday-Friday 8:00AM-4:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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11/20/07


RICHARD RIDLEY
SUPERVISORY PATENT EXAMINER